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March 26, 2011

Hon. Gary L. Sharpe, Chief Judge
James T. Foley – United States Courthouse
445 Broadway
Albany, New York 12207-2924

Re: Markel American Insurance Company v. Walters
11-CV-1347-GLS-ATB

Dear Judge Sharpe:

We represent Plaintiff in connection with this action. We write concerning the surreply Memorandum of Law filed by Defendants for Plaintiff's motion for summary judgment which is returnable on April 5, 2012.

Defendants' surreply is prohibited by Rule 7.1 (b) 1 of this Court, which states categorically: "A surreply is not permitted." Indeed, Defendants did not even seek leave of Court.

Even if this Court were to permit that filing, Defendants' argument that New York Insurance Law §3204 applies to the marine policy at issue is clearly wrong. By its terms, that section applies to "life, accident or health insurance, or contract of annuity." Those types of insurance are defined by Insurance Law §1113 (a)(1), (2) and (3) and are clearly distinct from "marine and inland marine insurance" which is separately defined in §1113 (a)(20). And even if that statute did apply to the policy at issue, the statute states expressly that "nothing shall be incorporated therein [*i.e.* into the insurance policy] by reference to any writing, unless a copy thereof is endorsed upon or attached to the policy or contract when issued" and no application for such a policy is admissible "unless a true copy was attached to such policy or contract when issued." Insurance Law §3204 (a)(1)and (2). Since no application was attached to the policy, Defendants' argument has no merit.

Respectfully,

James E. Mercante
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JEM/gg
cc: Ralph W. Fusco, Esq.
Attorney for Defendants